

## **§ 452.72**

### **§ 452.72 Period of inspection.**

The Act specifies the maximum period during which the right of inspection of membership lists is to be granted. The opportunity to inspect the lists must be granted once during the 30-day period prior to the casting of ballots in the election. Thus, where a mail ballot system is employed under which ballots are returnable as soon as received by members, the right to inspect must be accorded within the 30-day period prior to the mailing of the ballots to members. It would be an unreasonable restriction to permit inspection of lists only after the ballots have been mailed or the balloting has commenced.

### **§ 452.73 Use of union funds.**

In the interest of fair union elections, section 401(g) of the Act places two limitations upon the use of labor organization funds derived from dues, assessments, or similar levy. These limitations are:

(a) No such funds may be contributed or applied to promote the candidacy of any person in an election subject to title IV, either in an election within the organization expending the funds or in any other labor organization; and

(b) No such funds may be used for issuing statements involving candidates in the election.

This section is not intended to prohibit a union from assuming the cost of distributing to the membership on an equal basis campaign literature submitted to the union by the candidates pursuant to the rights granted by section 401(c), as previously discussed, nor does it prohibit the expenditure of such funds for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of the election.

### **§ 452.74 Expenditures permitted.**

The Act does not prohibit impartial publication of election information. Thus, it would not be improper for a union to sponsor a debate at which all candidates for a particular office are afforded equal opportunity to express their views to the membership prior to an election. Similarly, a union may issue information sheets containing biographical data on all candidates so

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long as all candidates are given equal opportunity to submit such data.

### **§ 452.75 Union newspapers.**

The provisions of section 401(g) prohibit any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members. Any such expenditure regardless of the amount, constitutes a violation of section 401(g).<sup>38</sup>

### **§ 452.76 Campaigning by union officers.**

Unless restricted by constitutional provisions to the contrary, union officers and employees retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election. However, such campaigning must not involve the expenditure of funds in violation of section 401(g). Accordingly, officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. Campaigning incidental to regular union business would not be a violation.

### **§ 452.77 Permissible use of union funds.**

Certain uses of union funds are considered permissible under section 401(g). For example, a court ruled that money of a subordinate union may be contributed to a committee formed to challenge the results of a national union election under title IV when such contributions are properly authorized by the members in an effort to pursue election remedies both within and outside the union. In holding such activity to be outside the prohibitions

<sup>38</sup> *Hodgson v. Liquor Salesmen's Union, Local No. 2*, 334 F.Supp. 1369 (S.D. N.Y.) aff'd 444 F.2d 1344 (C.A. 2 1971); *Shultz v. Local Union 6799, United Steelworkers*, 426 F.2d 969 (C.A. 9 1970).

of section 401(g), although the committee was formed by defeated candidates and their supporters, the court stated that “\* \* \* It does not promote the candidacy of any person if an election is declared invalid by a court under title IV’s procedure despite the fact that in the rerun election the candidates may be identical. Neither the winner nor the loser of the disputed election gains votes by the setting aside of the election. Such action is not a vote-getting device but merely returns the parties to their pre-election status; it does not place any candidate into office.”<sup>39</sup>

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

#### § 452.78 Expenditures by employers.

(a) As an additional safeguard, section 401(g) provides that no money of an employer is to be contributed or applied to promote the candidacy of any person in an election subject to the provisions of title IV. This includes indirect as well as direct expenditures. Thus, for example, campaigning by union stewards on company time with the approval of the employer would violate section 401(g) unless it can be shown that they are on legitimate work assignments, and that their campaign activities are only incidental to the performance of their assigned task and do not interfere with its performance. This prohibition against the use of employer money includes any costs incurred by an employer, or anything of value contributed by an employer, in order to support the candidacy of any individual in an election. It would not, however, extend to ordinary business practices which result in conferring a benefit, such as, for example, a discount on the cost of printing campaign literature which is made available on the same terms to other customers.

(b) The prohibition against the use of employer money to support the candidacy of a person in any election subject to the provisions of title IV is not restricted to employers who employ members of the labor organization in which the election is being conducted,

or who have any business or contractual relationship with the labor organization.

#### § 452.79 Opportunity to campaign.

There must be a reasonable period prior to the election during which office-seekers and their supporters may engage in the campaigning that the Act contemplates and guarantees. What is a reasonable period of time would depend upon the circumstances, including the method of nomination and the size of the union holding the election, both in terms of the number of members and the geographic area in which it operates. For example, a candidate for office in a local labor organization was improperly disqualified and then appealed to the international union which directed that his name be placed on the ballot. A complaint was considered properly filed alleging election violations because the candidate’s name was restored to the ballot two days prior to the election so that he was denied an equal opportunity to campaign. Similarly, in a mail ballot election a union’s delay in the distribution of campaign literature until after the ballots have been distributed and some have been cast would not satisfy the requirement to distribute such literature in compliance with a reasonable request.<sup>40</sup> Such a delay would deny the candidate a reasonable opportunity to campaign prior to the election and would thus not meet the requirement for adequate safeguards to insure a fair election. Where access to the convention floor is limited exclusively to delegates at a convention at which officers are to be elected, there must, nevertheless, be equal opportunity for all nominees to campaign. Thus, if the privilege of addressing the convention is accorded to any of the nominees, it must be accorded to all nominees who request it, whether they are delegates or not.

#### § 452.80 Bona fide candidates.

A person need not be formally nominated in order to be a bona fide candidate entitled to exercise the rights

<sup>39</sup> *Retail Clerks Union, Local 648 v. Retail Clerks International Association*, 299 F.Supp. 1012, 1024 (D.D.C. 1969).

<sup>40</sup> *Wirtz v. American Guild of Variety Artists*, 267 F. Supp. 527 (S.D.N.Y. 1967).